

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.9491 OF 2004

Charonne M. Sahajwani & Anr....Petitioners

Versus

State of Maharashtra & Ors...Respondents

Mr.Milind Vasudeo i/b. M.V. Jayakar & Co., for the Petitioners

Mr. Shailesh Shah i/b. V. Deshpande for Respondent No.2.

Mr. M.S. Solkar, A.G.P. for Respondent NO.1.

CORAM: F.I. REBELLO J.

DATE : 12th January, 2005

P.C.:

. The Recovery Certificate has been issued against the petitioner No.1 against which a Revision is maintainable under Section 154 of the Maharashtra Co-operative Societies Act. The Petitioners have not availed of that remedy on the ground that the Section requires deposit of 50% of the amount. That could be no answer considering that the Legislature has provided that in such matters atleast 50% of the amount must be secured before the party is heard. In the instant case the Petitioner No.1 is the wife of Respondent No.6. The Petitioner No.2 is a minor daughter of Respondent NO.6. The Respondent No.6 is a Partner of a partnership firm, Respondent No.5 to which the bank had granted loan and in respect of which the petitioner No.1 had stood as guarantor. The contention of the petitioner No.1 is that the loan in respect of which the guarantee was given has been repaid by Respondent NO.5. and as such the guarantee does not subsist. That is an issue which can be gone into in proceedings taken out under

Section 154 of the M.C.S. Act.

2. If the other contention namely that the flat stands in the name of petitioner Nos. 1 and 2 and, therefore, could not be attached, the remedy available to the petitioners is by filing objections under Rule 107 of the M.C.S. Rules as framed under the M.C.S. Act. It will, therefore, be open to the petitioners, if they have any legal right to file their objections before the Executing Authority before whom the proceedings may be pending.

3. With the above observations, Writ Petition stands disposed off. No order as to costs.

(F.I.REBELLO, J.)